



# The Post-9/11 Veterans Educational Assistance Improvements Act of 2010

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## Summary

Since enactment of the Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill; P.L. 110-252; Title 38 U.S.C., Chapter 33), there has been discussion of problems and possible enhancements to improve the program's implementation, administration, and benefits. This report summarizes provisions in the Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (S. 3447), as reported by the Senate Committee on Veterans' Affairs on August 5, 2010, for full Senate consideration.

Major provisions of S. 3447 would amend the Post-9/11 GI Bill (except as otherwise noted) to

- allow National Guard members to include full-time duty under Title 32 toward their qualifying active duty service;
- provide full tuition and fees to individuals eligible at the 100% benefit level attending public institutions of higher learning (IHLs);
- provide the national average of tuition and fees to individuals eligible at the 100% benefit level attending private or foreign IHLs, subject to actual charges;
- reduce the monthly housing allowance received by an eligible individual attending an IHL more than half-time but less than full-time;
- provide a monthly housing allowance to eligible individuals enrolled more than half-time at an IHL through distance learning on more than a half-time basis;
- Expand the eligible programs of education to include most programs approved under the Montgomery GI Bill-Active Duty (MGIB-AD; Title 38 U.S.C., Chapter 30), such as on-the-job and apprenticeship, flight, and correspondence training;
- allow eligible individuals on active duty to receive the books and supplies stipend in the same manner as individuals not on active duty;
- remove the limit on the number of licensing and certification tests;
- allow eligible individuals entitled to supplemental educational assistance for additional service under the MGIB-AD to receive remaining payments if the individual elects to receive benefits under the Post-9/11 GI Bill;
- allow eligible individuals to designate dependents to which benefits would be transferred after the eligible individual is separated from the Armed Forces;
- allow commissioned officers in the Public Health Service (PHS) and National Oceanic and Atmospheric Administration (NOAA) to transfer Post-9/11 GI Bill benefits to their dependents;
- require the Secretaries concerned to reimburse the Department of Veterans Affairs (VA) for Post-9/11 GI Bill benefits transferred to dependents and supplemental educational assistance; and
- amend the Vocational Rehabilitation and Employment (VR&E; Title 38 U.S.C., Chapter 31) program to allow eligible individuals to elect to receive the national average of the monthly basic allowance for housing (BAH) for a member of the Armed Forces with dependents in pay grade E-5 in lieu of the monthly subsistence allowance currently authorized.

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## Introduction

The Post-9/11 GI Bill (Title 38 U.S.C., Chapter 33), as enacted by the Post-9/11 Veterans Educational Assistance Act of 2008 (P.L. 110-252), became effective August 1, 2009. For a full description of the Post-9/11 GI Bill see CRS Report R40723, *Educational Assistance Programs Administered by the U.S. Department of Veterans Affairs*, by Cassandra Dortch. The Post-9/11 GI Bill was designed to provide comprehensive educational benefits to members of the armed forces for service on active duty since September 11, 2001, while meeting military recruiting and retention goals.

Since enactment, there has been discussion regarding possible improvements to the program. The Congress has held at least eight hearings to review progress and issues related to implementation, administration, and benefits. The 111<sup>th</sup> Congress has introduced more than 27 bills (and companion bills) to amend the Post-9/11 GI Bill by revising benefit allowances, the eligible programs of education, eligibility, and transferability to dependents.

There has been one major revision to the Post-9/11 GI Bill since its enactment. The Supplemental Appropriations Act 2009 (P.L. 111-32) established the Marine Gunnery Sergeant John David Fry Scholarship within the Post-9/11 GI Bill. The scholarship program provides some Post-9/11 GI Bill benefits to the children of individuals who, on or after September 11, 2001, die in the line of duty while serving on active duty as a member of the Armed Forces.

The remainder of this report provides brief descriptions of the provisions that would be amended or established under the Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (S. 3447). Senator Daniel K. Akaka introduced this bill on May 27, 2010. The Senate Committee on Veterans Affairs held a hearing on the bill on July 21, 2010, and reported the bill favorably without amendment on August 5, 2010. This report will be updated as warranted to track legislative developments.

If the following proposed benefit changes were enacted, veterans and service members would still need to carefully consider whether to elect the Post-9/11 GI Bill or another GI Bill for which they may be eligible in order to maximize their benefit. Depending on the individual's qualifying active duty service period, type of education or training, and rate of pursuit, total benefits will vary among the various GI Bills.<sup>1</sup>

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<sup>1</sup> For the purpose of this report, the GI Bills are the Montgomery GI Bill-Active Duty (Title 38 U.S.C., Chapter 30), Montgomery GI Bill-Selected Reserves (Title 10 U.S.C., Chapter 1606), Reserves Educational Assistance Program (Title 10 U.S.C., Chapter 1607), and the Post-9/11 GI Bill.

## Provisions in S. 3447

### Section 2—Modification of Entitlement to Educational Assistance

#### Title 32 Service Eligibility

Subsection (a) would allow National Guard members to include full-time duty under Title 32 toward their qualifying active duty service. Currently, only a call or order to active duty under Sections 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of Title 10 U.S.C. may be included in the active duty service eligibility period required of Reservists, including National Guard members. Members of the National Guard may also serve on full-time duty under Title 32 U.S.C. § 502(f) for service in the Active Guard and Reserve (AGR) program<sup>2</sup> or on full-time duty under Title 32 U.S.C. § 502(f) for service in support of domestic emergencies, such as the airport security mission, responding to hurricanes Katrina and Rita, and conducting the southwest border security mission.

Some have argued that the Post-9/11 GI Bill should be amended to include full-time duty under Title 32, and several bills have been introduced to achieve this purpose.<sup>3</sup> Supporters note that duties performed by National Guard AGRs are the same as the duties performed by AGRs in the federal reserves, and therefore it is unfair to exclude them from this benefit. They also argue that service in support of domestic emergencies is demanding, serves a national purpose, and is carried out in a military manner, even though done under the control of a state governor. Finally, they also note that other educational benefit programs like the Montgomery GI Bill-Active Duty (MGIB-AD; Title 38 U.S.C., Chapter 30) and Reserves Educational Assistance Program (REAP; Title 10 U.S.C., Chapter 1607) provide some coverage for National Guard personnel serving in a Title 32 status.<sup>4</sup>

The main objection to expanding this benefit to include Title 32 service has been cost, which the U.S. Department of Veterans' Affairs (VA) estimates at \$2.3 billion over 10 years.<sup>5</sup> Another

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<sup>2</sup> Note that members of the federal reserves (Army Reserve, Navy Reserve, Air Force Reserve, etc) who volunteer to serve in the AGR program are activated under Section 12301(d) of Title 10, and therefore earn entitlement to Post-9/11 GI Bill benefits while serving in the AGR program. Members of the Army National Guard and the Air National Guard who volunteer for the National Guard AGR program, however, are activated under Section 502(f) of Title 32 and do not earn entitlement to Post-9/11 GI Bill benefits while serving in the AGR program. If a National Guard AGR were called into federal service to serve in Iraq or Afghanistan, they would typically be mobilized under 10 U.S.C. 12302 and earn entitlement until released from federal service at the conclusion of their mobilization.

<sup>3</sup> See, for example, S. 1668, H.R. 3554, and H.R. 3467 in the 111<sup>th</sup> Congress.

<sup>4</sup> The definition of the term "active duty" for the Montgomery GI Bill-Active Duty "includes full-time National Guard duty first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard." 38 U.S.C. 3002 (7). The Reserve Educational Assistance Program provides coverage to a member of the reserve component who "(1) served on active duty in support of a contingency operation for 90 consecutive days or more; or (2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds." 10 U.S.C. 16163(a).

<sup>5</sup> This is the VA estimate for S. 1668. See statement of Gerald Cross, Acting Under Secretary for Health, Veterans Health Administration, Department of Veterans Affairs, October 21, 2009, before the U.S. Senate Committee on (continued...)

argument against expanding the benefit to include service in support of domestic emergencies is that such service is generally shorter in duration and less dangerous than service in support of military operations, and is therefore not directly analogous.

Specifically, subsection (a) would include as eligible qualifying service (1) National Guard AGRs who are in the federal reserve component for the purpose of organizing, administering, recruiting, instructing, or training the reserve components; (2) the existing Title 10 active duty periods; (3) full-time National Guard duty under Title 32 U.S.C. § 502(f) for service in the AGR program; and (4) full-time National Guard duty under Title 32 U.S.C. § 502(f) for service in support of domestic emergencies.

### Active Duty Service Eligibility for Training

Subsection (a) would also define entry-level and skill training to include one station unit training (OSUT). OSUT refers to the combination of basic and advanced training without a break, relocation, or change in unit. Currently, the qualifying active duty service includes service on active duty in entry-level and skill training if the total active duty service period is at least 24 months.<sup>6</sup> Additional qualifying active duty service may increase certain benefit payments (see **Table 1**). The U.S. Department of Defense (DOD) considers basic and advanced training to be entry-level training.

**Table 1. Percentage of Maximum Post-9/11 GI Bill Tuition, Fees, Housing Allowance, and Books and Supplies Benefits Based on Aggregate Length of Active Duty Service**

Aggregate Time Served on Active Duty Since 9/11/2001	Percentage of Maximum Benefit Payable
At least 36 months	100
At least 30 continuous days on active duty and discharged due to service-connected disability	100
At least 30 months, but less than 36 months	90
At least 24 months, but less than 30 months	80
At least 18 months, but less than 24 months	70
At least 12 months, but less than 18 months	60
At least 6 months, but less than 12 months	50
At least 90 days, but less than 6 months	40

**Source:** Prepared by CRS based on Title 38 U.S.C. § 3313 and data available from the U.S. Department of Veterans Affairs.

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(...continued)

Veterans Affairs, available at [http://veterans.senate.gov/hearings.cfm?action=release.display&release\\_id=faa07041-78f1-45c7-93f1-fff7b5a6f978](http://veterans.senate.gov/hearings.cfm?action=release.display&release_id=faa07041-78f1-45c7-93f1-fff7b5a6f978). According to this statement “VA estimates that the enactment of S. 1668 would result in a benefits cost to VA of \$120.6 million in FY 2011, \$1.1 billion over 5 years, and \$2.3 billion over 10 years.”

<sup>6</sup> If the period of active duty service including entry level and skill training is at least 24 months but the period of active duty service excluding entry level and skill training is less than 18 months, the applicable active duty period is 18 months.

## **Covered Discharges or Releases**

Subsection (b) would further specify the types of discharges or releases from active duty that allow an otherwise eligible individual to be eligible for the Post-9/11 GI Bill. S. 3447 would require that individuals discharged or released from active duty for certain medical conditions, hardship, or certain physical or mental conditions would also need the active duty service to be characterized as honorable service. The current law does not require that the active duty service preceding such discharges or releases be characterized as honorable service. S. 3447 would not change the current requirements that only individuals who continue on active duty; who are discharged with an honorable discharge; or who are released with honorable service and retired, or transferred to the Reserves or temporary disability list may be eligible for the Post-9/11 GI Bill.

## **Service Obligation from the U.S. Coast Guard Academy**

S. 3447 would exclude the active duty service obligation for accepting an appointment at the Coast Guard Academy from the Post-9/11 GI Bill qualifying active duty service. Current law excludes active duty service periods required to meet an obligation for education at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Reserve Officer Training Corps (ROTC) from the Post-9/11 GI Bill qualifying active duty service period. Of the five U.S. service academies, the Coast Guard Academy and Merchant Marine Academy were not included in the original law. Graduates of the Coast Guard academy are generally required to fulfill an active duty service obligation in the Coast Guard.<sup>7</sup> Graduates of the Merchant Marine Academy are required to apply for, and accept if tendered, a six-year appointment in one of the reserve components.<sup>8</sup>

## **Section 3—Modification of Amount of Assistance and Types of Approved Programs of Education**

This section would revise the benefit payments for tuition, fees, and the monthly housing allowance for many eligible individuals enrolled at institutions of higher learning (IHLs).<sup>9</sup> It would also authorize benefit payments for training at training establishments and education at institutions other than IHLs.

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<sup>7</sup> If an appointment as a commissioned officer of the Coast Guard is not tendered, the graduate must accept an appointment as a commissioned officer in the Coast Guard Reserve.

<sup>8</sup> 46 U.S.C. § 51306.

<sup>9</sup> An “institution of higher learning,” as defined in Title 38 U.S.C. § 3452(f), is an institution offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate state education authority under state law to grant an associate or higher degree, or in the absence of a state education authority if the school is accredited for degree programs by a recognized accrediting agency. Institutions of higher learning are also hospitals offering educational programs at the postsecondary level and foreign educational institutions that offer courses leading to a standard college degree, or the equivalent, and which are recognized as such by the secretary of education (or a comparable official) of the country or other jurisdiction in which the institution is located.



## **Tuition and Fees Benefit Amounts for Enrollment at Institutions of Higher Learning**

Subsection (a) would change the tuition and fees benefit for individuals enrolled more than half-time at IHLs, and may encourage individuals to attend public institutions. Individuals attending public IHLs would be eligible for a percentage of the established charges<sup>10</sup> for the program of education. The percentage of the established charges is determined by the length of qualifying active duty service (**Table 1**). Individuals attending private or foreign IHLs would be eligible for a percentage of the established charges for the program of education or a percentage of “the average of the established charges at all IHLs in the United States for a program of education leading to a baccalaureate degree as determined by the National Center for Education Statistics of the Department of Education for the most recent academic year” (hereafter referred to as *ED-determined average undergraduate charges*), whichever is less. Under current law, individuals attending public, private, and foreign IHLs are eligible for a percentage of the established charges for the program of education or a percentage of the maximum amount of undergraduate in-state tuition charged for the same number of credit hours at the most expensive public institution in the state in which the individual is enrolled, whichever is less. The current law has been criticized for being complicated, inequitable, and difficult to administer since there is great variability in tuition and fees charges across the states and some states set tuition late in the fall and again in the spring. This amendment may address the criticism directed at the VA for separating established charges into a tuition benefit and a fees benefit, if the VA uses a single number for the average established charges as determined by the U.S. Department of Education (ED).

S. 3447 may increase the basic tuition and fees benefit (excluding Yellow Ribbon program payments) for individuals enrolled more than half-time at public IHLs above the amounts provided under current law for two groups of students: those attending graduate and professional programs and those charged out-of-state tuition.<sup>11</sup> ED estimates for the 2008-09 academic year that the average in-state tuition and required fees at all public four-year, degree-granting institutions was \$6,319 for full-time undergraduate students, \$7,914 for full-time graduate students, and between \$14,476 and \$24,787 for full-time first-professional students, depending on the first-professional field of study.<sup>12</sup> The estimated average out-of-state tuition and required fees for the 2008-09 academic year at all public four-year, degree-granting institutions was \$15,898 for full-time undergraduate students.<sup>13</sup>

With regards to the ED-determined average undergraduate charges, the VA, in coordination with ED, would need to choose the best methodology or source for the data as there are various potential methods to approximate the proposed statutory requirement. ED does not provide data

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<sup>10</sup> Established charges are the lesser of the amounts charged for the course(s) determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State Approving Agency, or the tuition and fees or charges that similarly circumstanced nonveterans enrolled in the same course(s) are required to pay.

<sup>11</sup> Service members on active duty for a period of more than 30 days and their dependents are charged no more than in-state tuition if enrolled at a public institution in the state in which the service member is domiciled or maintains a permanent duty station. The individual maintains in-state tuition if continuously enrolled in the institution. Title 20 U.S.C. § 1015d.

<sup>12</sup> Snyder, T.D., and Dillow, S.A. (2010). *Digest of Education Statistics 2009* (NCES 2010-013). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC, Tables 334 and 337.

<sup>13</sup> Estimate calculated by CRS using data downloaded from ED’s Integrated Postsecondary Education Data System and weighted by the number of full-time-equivalent undergraduates.

on IHLs; rather it provides data on institutions of higher education (IHEs).<sup>14</sup> Because degree-granting IHEs grant associate's or higher degrees and participate in the federal financial aid programs of Title IV of the Higher Education Act (HEA) of 1965, as amended, they may be the closest proxy for IHLs. The annual publication of the *Digest of Education Statistics* provides the average undergraduate tuition and required fees (the average of the sum of tuition and fees) charged for full-time students in all four-year, degree-granting institutions. Using all four-year, degree-granting IHEs may provide a proxy for programs of education at IHLs leading to a baccalaureate degree, but some of the undergraduate programs at four-year institutions do not lead to a baccalaureate degree and may charge less than programs leading to a baccalaureate degree. The required fees reported by ED are lower than the mandatory fees that the VA has used to establish the maximum total fees eligible for reimbursement in the past. Another potential limitation with using these data is that the most recent April 2010 publication of the *Digest of Education Statistics* provides estimates for the 2008-09 academic year—two years prior to the upcoming 2010-11 academic year. The reported average is \$12,075.

An alternative data source to the *Digest of Education Statistics* is early release data from ED's Integrated Postsecondary Education Data System (IPEDS). As of July 2010, IPEDS data can be used to calculate an approximation of the average in-state tuition and average required fees for full-time undergraduates at all Title IV participating, four-year, degree-granting IHEs for the 2009-10 academic year.<sup>15</sup> As with data from the *Digest of Education Statistics*, this data will include tuition and fees charged for pre-baccalaureate degrees and certificates, and it will reflect a prior academic year. The approximated average is \$12,364.

S. 3447 may, on average, increase the basic tuition and fees benefit (excluding Yellow Ribbon program payments) for individuals attending private and foreign IHLs more than half-time. Average in-state tuition and fees charged at public institutions (\$6,319 for degree-granting, four-year IHEs in the 2008-09 academic year) are lower than at all public and private institutions (\$12,075 for four-year, degree-granting IHEs in the 2008-09 academic year). However on average, providing a maximum benefit based on all public and private institutions could leave eligible individuals with an unpaid balance for tuition and fees charges that are not covered by the basic benefit. For example, an eligible individual at the 100% benefit level (see **Table 1**) enrolled full-time at a private, two-year institution would be charged an average of \$13,632<sup>16</sup> for in-state tuition and fees, and the Post-9/11 GI Bill would remit an average of \$12,075 to the institution for

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<sup>14</sup> As defined in Sections 101 and 102 of the Higher Education Act of 1965, as amended, an IHE admits as regular students only those who have a high school diploma or its equivalent or who are beyond the age of compulsory school attendance. Also, an IHE may be a less-than-two-year postsecondary vocational institution or may provide one-year programs of education or training without having to provide an associate's or higher degree. With exceptions and the possibility of waivers, no more than 50% of an IHE's courses can be correspondence courses; no more than 50% of an IHE's students can be enrolled in correspondence courses; no more than 25% of the IHE's students may be incarcerated; and no more than 50% of an IHE's students may be without a high school diploma or its equivalent unless it offers an associate's or bachelor's degree. With exceptions, neither the IHE nor its affiliates can have filed for bankruptcy, and the IHE's owner or chief executive officer cannot have been guilty of a crime involving the acquisition, fraud, use, or expenditure of HEA Title IV funds. In addition, postsecondary institutions outside the United States must meet additional criteria to be considered IHEs.

<sup>15</sup> Although tuition and fees are reported for the 2009-10 academic year, the number of full-time-equivalent undergraduates, which is used to weight the tuition and fees data to calculate an average, is reported for the 2008-09 academic year thus compromising the accuracy of the calculation.

<sup>16</sup> The average in-state tuition and fees charged at degree-granting, two-year, private IHEs in the 2008-09 academic year was \$13,632, according to Snyder, T.D., and Dillow, S.A. (2010). *Digest of Education Statistics 2009* (NCES 2010-013). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC, Table 334.

tuition and fees. The individual would have an unpaid balance of \$1,557. The unpaid balance would likely be larger at a private, four-year institution.

## **Monthly Housing Allowance for Enrollment at Institutions of Higher Learning**

Subsection (b) would reduce the monthly housing allowance received by individuals attending IHLs more than half-time based on the number of credit hours, or their equivalent, in which the individual is enrolled. For example, an individual enrolled in ten credit hours, assuming 12 credit hours as full-time, would receive a percentage of 10/12<sup>th</sup> of the monthly basic allowance for housing (BAH) for a member of the Armed Forces with dependents in pay grade E-5 in the military housing area in which the IHL is located.<sup>17</sup> The percentage of the BAH is determined by the length of qualifying active duty service (**Table 1**). Subsection (b) would also put into statute the VA regulation that sets the BAH for attendance at foreign institutions equal to the national average of BAH. Under current law, individuals enrolled more than half-time receive a percentage of the BAH without adjustment for their enrollment rate. This change may reduce the housing stipend received by about 14% of recipients.<sup>18</sup> This change is similar to the other GI Bills that pay a reduced monthly subsistence allowance to individuals enrolled less than full-time at an IHL. For example, the MGIB-AD program provides 75% of the maximum monthly subsistence allowance to individuals enrolled less than full-time but at least three-quarter time.

Subsection (b) would provide a monthly housing allowance to individuals enrolled more than half-time at an IHL through distance learning on more than a half-time basis.<sup>19</sup> The allowance would be a percentage of one-half of the national average of BAH, reduced for the individual's enrollment rate. The percentage of the BAH is determined by the length of qualifying active duty service (**Table 1**). Under current law, individuals enrolled in a program of education offered through distance learning are not eligible for the housing allowance. Under current regulations, individuals enrolled *exclusively* in a program through distance learning are not eligible for the housing allowance. Veterans service organizations have asserted that excluding individuals enrolled *exclusively* in a program through distance learning from the housing allowance is unfair and does not take into consideration the unique needs and circumstances of veterans.<sup>20</sup> A few bills have been introduced in the 111<sup>th</sup> Congress to provide a housing allowance to individuals enrolled in a program through distance learning.<sup>21</sup> This change would increase the Post-9/11 GI Bill's program cost. The VA may interpret how to calculate the housing allowance for individuals enrolled in both distance learning and residential courses. It is unclear how, if at all, the housing

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<sup>17</sup> BAH is a DOD benefit to uniformed service members to provide housing compensation when government quarters are not provided. The amount is based on housing costs in local civilian housing markets and is payable based on geographic duty location, pay grade, and dependency status.

<sup>18</sup> According to the VA Annual Benefits Report: Fiscal Year 2009, 14% of MGIB-AD beneficiaries who began receiving education benefits during FY2009 trained at three-quarters time.

<sup>19</sup> Distance learning is defined in Title 20 U.S.C. § 1003. It consists of interaction between the student and the instructor (who is physically separated from the student) through the use of communications technology instead of regularly scheduled, conventional classroom or laboratory sessions. Communications technology includes mail, telephone, audio or videoconferencing, computer technology (on-line internet courses or email), or other electronic means such as one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices.

<sup>20</sup> See for example, The American Legion, *Fiscal Year 2010 National Commander's Testimony for the Department of Veteran's Affairs*, September 10, 2009, p. 25.

<sup>21</sup> See H.R. 950, H.R. 3661, H.R. 4064.

allowance would be adjusted for individuals who take longer than a regular academic term to complete distance learning courses.

## **Expansion of the Eligible Programs of Education**

Subsection (c) would expand the eligible programs of education to include all of those approved under the MGIB-AD. Examples of such programs are preparatory courses for admissions tests to IHLs; apprentice and on-the-job training; cooperative programs; and courses or subjects, pursued by an eligible veteran at an educational institution, required by the Administrator of the Small Business Administration (SBA) as a condition to obtaining financial assistance under the provisions of Section 7(i)(1) of the Small Business Act (15 U.S.C. § 636 (i)(1)). Under current law, eligible programs of education are courses offered by an IHL. Several veterans service organizations have requested this amendment so that eligible individuals would not be limited to seeking a standard college degree and would have the maximum choice in educational training options as provided in the other GI Bills.<sup>22</sup> Several bills have been introduced in the 111<sup>th</sup> Congress to expand the eligible programs of education under the Post-9/11 GI Bill.<sup>23</sup> Providing benefits for additional programs of education under the Post-9/11 GI Bill may increase the program's cost, but it may also decrease the costs of the other GI Bills if individuals elect to receive benefits under the Post-9/11 GI Bill. S. 3447 would not reduce the benefit for the expanded programs of education according to the length of qualifying active duty service. S. 3447 also would not amend Title 38 U.S.C. § 3301 note to allow individuals who make an irrevocable election to receive assistance under the Post-9/11 GI Bill and who enroll in one of expanded programs of education, as described below, to receive their unused contributions (up to \$1,200) toward eligibility under the MGIB-AD.

## ***On-the-Job and Apprenticeship Training***

S. 3447 would provide two monthly payments on behalf of individuals in apprenticeship or on-the-job training. The first payment would be a monthly allowance paid to the educational institution (not the training establishment) equal to 75%, 55%, and 35% of 1/12<sup>th</sup> of the ED-determined average undergraduate charges for the first six months, second six months, and thereafter, respectively. Based on the 2008-09 academic year average undergraduate tuition and required fees charged for full-time students in all Title IV participating, four-year, degree-granting institutions of \$12,075 reported by ED,<sup>24</sup> the monthly allowance would be \$755 ( $\$12,075 \times 1/12 \times 0.75$ ) for the first six months.

In general, on-the-job training programs, which do not qualify as apprenticeship programs according to the U.S. Department of Labor Title 29 U.S.C. § 50a, must meet certain requirements, including wage standards approved under the GI Bills. The program must pay starting wages, which are not less than the wages paid nonveterans in the same training position and are at least 50% of the wages paid for the job for which the veteran is to be trained. In addition, the wages must be increased in regular periodic increments until, not later than the last full month of the

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<sup>22</sup> For example, see Veterans of Foreign Wars, *The Independent Budget for the Department of Veterans Affairs, Fiscal Year 2011*, pp. 34-35.

<sup>23</sup> See H.R. 1336, S. 2769, H.R. 2928, S. 3171, H.R. 3337, H.R. 3813, H.R. 3948, and H.R. 4320.

<sup>24</sup> Snyder, T.D., and Dillow, S.A. (2010). *Digest of Education Statistics 2009* (NCES 2010-013). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC, Tables 334.

scheduled training period the wages are at least 85% of the wages paid for the job for which the veteran or eligible person is being trained. On-the-job training programs administered by the government do not need to abide by the same wage increase requirements, but the starting wage for the veteran trainee must still be 50% of the wage paid to non-veterans.<sup>25</sup> On-the-job training programs are not generally associated with an educational institution and do not generally charge educational costs.

Apprenticeship training is a combination of on-the-job training and supplemental instruction. The supplemental instruction may be offered in a classroom by an educational institution. The sponsoring organization will increase apprentices' wages as their skill level increases. Depending on the sponsoring organization, apprentices may be required to pay for the classroom instruction. S. 3447 does not adjust the payments to educational institutions based on the actual charges.

The second payment would be a monthly allowance paid directly to the individual equal to the monthly BAH for a member of the Armed Forces with dependents in pay grade E-5 in the military housing area in which the employer is located or the national average BAH paid monthly to a member of the Armed Forces with dependents in pay grade E-5, whichever is less. The lowest monthly 2009 BAH was \$801 (Mansfield, OH). VA calculated that the 2009 national average BAH was \$1,333 per month.<sup>26</sup>

Therefore, in total for the two benefit payments, an individual in the first six months of apprenticeship or on-the-job training would be eligible to receive a minimum monthly benefit of \$1,556 (\$801 + \$755) and a maximum of \$2,088 (\$1,333 + \$755). The individual's entitlement period would be reduced one month for each month of educational assistance received.

Under the MGIB-AD for an individual in apprenticeship or on-the-job training, the monthly allowance is 75%, 55%, and 35% of the monthly benefit otherwise payable to that individual for the first six months, second six months, and thereafter, respectively. Individuals working/training fewer than 120 hours monthly have their payment and entitlement period usage proportionately reduced. An individual's entitlement period is respectively reduced at 0.75, 0.55, or 0.35 months for each month of educational assistance received, depending on the payment. The maximum basic benefit under the MGIB-AD as of October 1, 2009, is \$1,026 for the first six months of training. S. 3447 would not reduce the benefit according to the length of qualifying active duty service or for individuals working/training fewer than 120 hours monthly.

### *Flight Training*

S. 3447 would pay a benefit to the educational institution on behalf of individuals pursuing flight training equal to the established charges for the program of education or 60% of the ED-determined average undergraduate charges, whichever is less. The individual's entitlement period would be reduced one month for each month of educational assistance received. S. 3447 would not reduce the benefit according to the length of qualifying active duty service. Under the MGIB-AD, individuals pursuing education consisting exclusively of flight training receive 60% of the institution's established charges for completed courses, and the individual's entitlement period is

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<sup>25</sup> 38 U.S.C. § 3677(b)(2).

<sup>26</sup> See VA website at <http://www.gibill.va.gov/post-911/post-911-gi-bill-summary/> for the BAH for those attending foreign schools, as posted on July 23, 2010.



reduced one month for each amount paid that is equal to the monthly benefit otherwise payable to such individual.

If the VA reimburses the cost of completed courses as under the MGIB-AD, the less than monthly lump sum payments will allow individuals to use their entitlement period slowly. It is not clear how 60% of the ED-determined average undergraduate charges would be used to determine benefits. The VA may choose to remit payments to the educational institution upon certification of enrollment for each course until the total for that year equals 60% of the ED-determined average undergraduate charges. These potentially large lump sum payments increase the risk that individuals may have large overpayments.

### *Correspondence Training*

S. 3447 would pay a benefit to the educational institution on behalf of individuals pursuing correspondence training equal to the established charges for the program of education or 55% of the ED-determined average undergraduate charges, whichever is less. The individual's entitlement period would be reduced one month for each month of educational assistance received. S. 3447 would not reduce the benefit according to the length of qualifying active duty service.

Under the MGIB-AD, individuals pursuing education exclusively by correspondence receive 55% of the institution's established charges for completed courses, and the individual's entitlement period is reduced one month for each amount paid that is equal to the monthly benefit otherwise payable to such individual. Correspondence training differs from distance learning or online education in that individuals in correspondence training usually receive lessons in the mail and have a certain amount of time to complete and return them for a grade. If the VA reimburses the cost of completed courses as under the MGIB-AD, the less than monthly lump sum payments will allow individuals to use their entitlement period slowly. As with flight training, it is unclear how 55% of the ED-determined average undergraduate charges would be used to determine benefits.

### *Other Educational and Training Programs*

For individuals pursuing approved programs of education other than on-the-job or apprenticeship, flight, and correspondence training and other than programs of education offered at IHLs, S. 3447 would provide two benefit payments on behalf of individuals pursuing a certificate or other non-college degree. One payment equal to the lesser of the established charges for the program of education or 55% of the ED-determined average undergraduate charges would be paid directly to the educational institution. A second payment to the individual would be a monthly stipend equal to the BAH for a member of the Armed Forces with dependents in pay grade E-5 in the military housing area in which the educational institution is located. The individual's entitlement period would be reduced one month for each month of educational assistance received.

The proposed language may exclude individuals whose objective is not a certificate or degree. Some of the approved programs of education under the MGIB-AD, such as courses required by the SBA to obtain an SBA loan, may not lead to a degree or certificate. S. 3447 would not reduce the benefit according to the length of qualifying active duty service or less than full-time enrollment. As in the case of flight training, it is unclear how the ED-determined average undergraduate charges would be used to calculate the benefit.

## **Active Duty Participants**

S. 3447 would make individuals on active duty eligible to receive the books and supplies stipend in the same manner as individuals not on active duty. Under current law, individuals on active duty receive (payable to the IHL) for each academic term the amount of tuition and fees charged by the IHL,<sup>27</sup> but the amount cannot duplicate any amounts received through a DOD Tuition Assistance Program.<sup>28</sup> The tuition and fees amount could exceed the tuition and fees benefits paid to private and foreign IHLs on behalf of other individuals.<sup>29</sup> This amendment would increase the cost of the Post-9/11 GI Bill. In the case of an active duty participant pursuing a program of education at an institution other than an IHL it is unclear whether the payment rates for active duty participants or the payment rates for institutions other than an IHL would prevail.

## **Section 4—Modification of Assistance for Licensure and Certification Tests**

Section 4 of S. 3447 would remove the limit on the number of licensing and certification tests, which may be reimbursed as long as each payment for each test does not exceed \$2,000. Entitlement would be charged at the rate of one month of entitlement for each amount equal to 1/12<sup>th</sup> of the ED-determined average undergraduate charges. Reimbursement of \$2,000 in licensing and certification tests would use about two months of entitlement for an individual at the 100% benefit level (see **Table 1**), based on the 2008-09 academic year average undergraduate tuition and required fees charged for in-state, full-time students in all four-year, degree-granting institutions of \$12,075 reported by ED.<sup>30</sup> The entitlement charge would not depend on the length of active duty service.

Under current law, the Post-9/11 GI Bill will reimburse an individual for a fee of up to \$2,000 for *one* approved licensing or certification test without a charge to entitlement. The other GI Bills place no limit on the number of tests, which may be reimbursed as long as each payment for each test does not exceed \$2,000, but the entitlement period is reduced by the number of months equaling the proportion that the assistance is to the regular full-time monthly allowance.

## **Section 5—Transfer of Entitlement to Supplemental Educational Assistance to Post-9/11 Educational Assistance**

Section 5 of S. 3447 would allow individuals entitled to supplemental educational assistance for additional service<sup>31</sup> under the MGIB-AD to transfer any remaining supplemental assistance

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<sup>27</sup> The entitlement period is reduced one month for each month enrolled.

<sup>28</sup> The Tuition Assistance (TA) program was established to promote retention. Through TA programs, military service branches may pay tuition and expenses for the education and training of active duty personnel.

<sup>29</sup> This may be relevant to spouses who choose to attend an expensive, private IHL.

<sup>30</sup> Snyder, T.D., and Dillow, S.A. (2010). *Digest of Education Statistics 2009* (NCES 2010-013). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC, Tables 334.

<sup>31</sup> The military branches may provide supplemental educational assistance for additional service to active duty service members after they serve an additional five consecutive years on active duty after completing the initial two- or three-year eligibility period of active duty service. Reservists may receive the supplemental educational assistance for additional service after they serve an additional two consecutive years on active duty and four consecutive years in the Selected Reserves, in addition to the initial two-year active duty and four-year Selected Reserves eligibility period.

payments if the individual elects to receive benefits under the Post-9/11 GI Bill. Under current Post-9/11 GI Bill regulations, an individual who makes an irrevocable election to relinquish eligibility under the MGIB-AD for Post-9/11 GI Bill benefits is entitled to maintain the MGIB-AD supplemental educational assistance (“kicker”) for a critical skill.<sup>32</sup> Supplemental assistance under current law and as proposed in S. 3447 only applies to individuals attending IHLs who are eligible for the monthly housing stipend. Individuals pursuing education or training other than at an IHL would not be eligible for supplemental educational assistance for critical skills or additional service under the Post-9/11 GI Bill. This amendment would not address the criticism that individuals in the Post-9/11 GI Bill forfeit any contributions to the \$600 Buy Up program, another benefit supplement.<sup>33</sup>

Section 5 also would require the Secretaries concerned to reimburse the VA for increased expenses related to the provision of supplemental educational assistance.<sup>34</sup>

## **Section 6—Transfer of Unused Education Benefits to Family Members**

Section 6 of S. 3447 would add a provision regarding the transfer of Post-9/11 GI Bill benefits to dependents to allow individuals who have been discharged or released from the Armed Forces to designate family members, the number of months of the entitlement period, and the period during which it may be used, and modify or revoke the designation at any time. Under current law after retirement or separation from the Armed Forces, the individual cannot add new family members (38 U.S.C. § 3319(f)(1)). Although S. 3447 would add a provision in the Post-9/11 GI Bill to allow individuals to add new family members after retirement or separation from the Armed Forces, it would not modify the existing provision that excludes such action. It is unclear how this discrepancy would be resolved.

Section 6 would also allow commissioned officers of the Public Health Service (PHS) and National Oceanic and Atmospheric Administration (NOAA) to transfer Post-9/11 GI Bill benefits to dependents.<sup>35</sup> Under current law, the Secretary of Defense may authorize the Secretaries concerned to use the transfer of benefits to dependents as a recruitment and retention tool, and the Secretary of Defense is authorized to establish regulations regarding the transfer of benefits. S. 3447 would expand the definition of Secretaries concerned to include the Secretaries of Health and Human Services and Commerce as defined in Title 38 U.S.C. § 101(25). The proposed

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<sup>32</sup> 38 C.F.R. § 21.9650. Each military branch may provide a College Fund/Kicker at recruitment, which increases the monthly allowance by up to \$950 for individuals with critical skills.

<sup>33</sup> Under the MGIB-AD \$600 Buy Up Program, service members may contribute up to an additional \$600 while on active duty. For an additional \$600 contribution, the eligible individual may receive up to \$5400 in additional MGIB-AD benefits.

<sup>34</sup> The term “Secretary concerned” is defined in Title 38 U.S.C. § 101(25) to mean the Secretary of the Army, with respect to matters concerning the Army; the Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps; the Secretary of the Air Force, with respect to matters concerning the Air Force; the Secretary of Homeland Security, with respect to matters concerning the Coast Guard; the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey.

<sup>35</sup> H.R. 3657 also proposes to make commissioned officers in the PHS and NOAA eligible to transfer benefits to dependents.



language would put DOD in the position of authorizing other executive agencies and establishing regulations for their adoption.

Section 6 would also require the Secretaries concerned to reimburse the VA for expenses related to the provision of Post-9/11 GI Bill educational assistance to dependents. The paying federal agencies may desire a change in the regulations to limit the number of months transferred or increase the service requirement in order to reduce their expenditures.

## **Section 7—Limitations on Receipt of Educational Assistance under National Call to Service and Other Programs of Educational Assistance**

Section 7 of S. 3447 would prevent individuals from receiving concurrent benefits from the National Call to Service Program (Title 10 U.S.C. § 510) and the GI Bills. Under current law, individuals cannot receive educational benefits concurrently under the following programs: Chapters 30, 31, 32, 33, 34, 35, and 36 of Title 38 U.S.C.; Chapters 106, 107, 1606, and 1607 of Title 10 U.S.C.; Section 903 of the Department of Defense Authorization Act, 1981 (P.L. 96-342; 10 U.S.C. 2141 note); the Hostage Relief Act of 1980 (P.L. 96-449; 5 U.S.C. 5561 note); and the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99-399; 22 U.S.C. §§ 4801 et seq.). Individuals would still be able to receive duplicate educational assistance benefits from various programs administered by other agencies, such as the Department of Education (including Pell Grants and Stafford Loans).<sup>36</sup> This change may decrease the cost of the Post-9/11 GI Bill.

## **Section 8—Approval of Programs of Education Consisting of Distance Learning**

Section 8 of S. 3447 would prevent state approving agencies from approving nonaccredited courses pursued in whole or in part by distance learning.<sup>37</sup> Section 8 would also permit the approval of distance learning programs that are accredited and that lead to a standard college degree or a certificate that reflects educational attainment offered by an IHL. These modifications would apply to all of the GI Bills.

## **Section 9—Increase in Amount of Reporting Fee**

Section 9 of S. 3447 would increase the reporting fee remitted to educational institutions and training establishments that provide education or training to individuals under one of the GI Bills. The annual fee would increase from \$7 to \$12 for each individual enrolled or training and from

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<sup>36</sup> Title IV of the Higher Education Act of 1965, as amended, authorizes several student aid programs: Pell Grant program, William D. Ford Federal Direct Loan (DL) Program, American Competitiveness Grant (ACG) program, National Science and Mathematics Access to Retain Talent (SMART) Grant program, Federal Supplemental Educational Opportunity Grant (FSEOG) program, Leveraging Educational Assistance Partnership (LEAP) program, Federal Work-Study (FWS) program, Federal Perkins Loan program, and Grants for Access and Persistence (GAP) program. For more information on Stafford loans, see CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

<sup>37</sup> Distance learning would be as defined in 20 U.S.C. § 1003(6).

\$11 to \$15 for each individual whose advanced payment is directed to the institution or establishment. The reporting fee was last increased by the GI Bill Improvement Act of 1977 (P.L. 95-202). This change would increase the cost of administering the GI Bills.

## **Section 10—Amount of Subsistence Allowance for Veterans with Service-Connected Disabilities**

Section 10 of S. 3447 would amend the Vocational Rehabilitation and Employment (VR&E; Title 38 U.S.C., Chapter 31) program to allow eligible individuals to elect to receive the national average of BAH in lieu of the monthly subsistence allowance currently authorized. VA calculated the monthly national average BAH for 2009 at \$1,333.<sup>38</sup> The VR&E program provides comprehensive services and assistance to enable veterans with service-connected disabilities and employment handicaps<sup>39</sup> to achieve maximum independence in daily living, to become employable, and to obtain and maintain suitable employment.<sup>40</sup> Veterans who need additional education or training to become employable are paid a subsistence allowance while they participate in vocational rehabilitation training. As of October 1, 2009, the maximum monthly VR&E subsistence allowance is \$800.36 for individuals with two dependents plus an additional \$58.34 for each additional dependent.<sup>41</sup> The subsistence allowance is reduced for less than full-time training, fewer dependents, and the type of training. Section 10 of S. 3447 would not reduce the national average of monthly BAH based on the enrollment rate, number of dependents, or type of training. This change would increase the cost of the VR&E program.

## **Section 11—Repeal of Authority to Make Certain Interval Payments**

Section 11 of S. 3447 would no longer authorize the VA to provide a subsistence allowance to individuals under any of the GI Bills during a school intercession longer than 30 days. Under current law, the VA may pay the GI Bill subsistence allowance to individuals enrolled in educational institutions

- when the school is temporarily closed under an established policy based upon an Executive Order of the President or due to an emergency situation;
- between consecutive school terms if the period between such consecutive terms does not exceed 30 days; or
- between school terms where the educational institution certifies the enrollment of the individual on an individual term basis, the period between those terms does not exceed eight weeks, and both the terms preceding and following the period are not shorter in length than the intervening period.

This modification would lower the cost of the Post-9/11 GI Bill and other GI Bills.

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<sup>38</sup> See VA website at <http://www.gibill.va.gov/post-911/post-911-gi-bill-summary/>, as posted on July 23, 2010. The national average for the BAH is published as the monthly BAH for individuals attending foreign schools.

<sup>39</sup> The term employment handicap is defined by law in 38 U.S.C. § 3101.

<sup>40</sup> For more information on the VR&E program, see CRS Report RL34627, *Veterans' Benefits: The Vocational Rehabilitation and Employment Program*, by Christine Scott and Carol D. Davis.

<sup>41</sup> For current rates see the Department of Veterans Affairs rate tables, available at [http://www.vba.va.gov/bln/vre/doc/sa\\_rates.pdf](http://www.vba.va.gov/bln/vre/doc/sa_rates.pdf).

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